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Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland. The present report examines the situation on the basis of research and investigation carried out, including during a conference organized by the Sami Parliamentary Council in Bierke Hemavan, Sweden, from 25 to 27 August 2015. During her visit, the Special Rapporteur heard repeated and insistent concerns over the increase in natural resource investments in the Sápmi region and the States' balancing of interests in that context. The balance, which is rarely free of conflict, is a primary focus of the present report. The Special Rapporteur concludes that there are still challenges that the Governments must meet, in particular with respect to adequately defining and recognizing the Sami people's rights over their land and related resources, and that further efforts are needed to advance and strengthen Sami rights, particularly in the face of increased natural resource investments in the Sápmi region.

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Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland*

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* Circulated in the language of submission only.

I. Introduction

1. In the present report, the Special Rapporteur examines the human rights situation of the Sami people in Norway, Sweden and Finland on the basis of information received during her visit to the Sapmi region, including during a conference organized by the Sami Parliamentary Council in Bjurkle Hemavan, Sweden, from 2[illegible] to 2[illegible] August 2015, and on the basis of independent research. The visit was carried out in follow-up to the 2010 visit of the previous Special Rapporteur, James Anaya.

2. During her visit, the Special Rapporteur travelled to Stockholm, where she met with government officials, and to Bjurkle Hemavan, where she met with the Swedish Minister for Culture and Democracy, government officials from Norway, Sweden and Finland and representatives of the three Sami Parliaments. In addition, the Special Rapporteur spoke with representatives of local Sami communities and Sami non-governmental organizations. The Special Rapporteur would like to thank the Governments of Norway, Sweden and Finland for their openness and willingness to hold constructive discussions on the situation of the Sami people. She would like to express her appreciation to the Sami Parliamentary Council for organizing the conference in Bjurkle Hemavan and is grateful to the Sami Parliaments and local Sami communities for the information that provided and for their hospitality. She is also grateful to the staff of the Office of the United Nations High Commissioner for Human Rights for their assistance in ensuring the success of the mission.

3. In the present report, the Special Rapporteur does not purport to address all or the issues related to the Sami people or even all of the issues covered by the former Special Rapporteur in his report on the situation of the Sami people in the Sapmi region of Norway, Sweden and Finland (A/HRC/18/35/Add.2). During her visit, the Special Rapporteur heard significant concerns about the increase in natural resource investments in the Sapmi region and the adverse impacts the investments may have on the rights of the Sami people and the States' balancing of interests in that regard. The balance, which is rarely free of conflict, is a primary focus of the present report, although other key developments and issues are also raised. Conscious of the need to find workable solutions, the Special Rapporteur focuses her report on reviewing the sectoral legislation regulating natural resource investments in Norway, Sweden and Finland, and offers recommendations for measures that should be taken to ensure that the three States are not out of step with contemporary human rights values.

II. The Sami people

4. The Sami people traditionally inhabit a territory known as Sapmi, which traverses the northern parts of Norway, Sweden, Finland and the Russian Kola peninsula. Although the Sami are divided by the formal boundaries of the four States, they continue to exist as one people and are united by cultural and linguistic bonds and a common identity. Regrettably, the Special Rapporteur did not have an opportunity to meet with representatives of the Government of the Russian Federation and Russian Sami during her visit. The present report will focus on the situation of the Sami people in Norway, Sweden and Finland only.

5. The Sami people's culture and traditions have evolved over hundreds of years through a close connection to nature and land. Traditionally, the Sami have relied on hunting, fishing, gathering and trapping, with reindeer herding, in particular, of central importance. Some Sami communities, referred to as Sea Sami or Coastal Sami, settled in the coastal areas within what is today Norway. The State borders that now divide the Sami homeland were established over a 200-year period, roughly from the middle of the

seventeenth to the middle of the nineteenth centuries, cutting through linguistic and cultural communities and constraining reindeer-herding activities. Today, the Sami population is a numerical minority within those States and is estimated to be between 70,000 and 100,000, with about 40,000 to 60,000 in Norway, 15,000 to 20,000 in Sweden, 9,000 in Finland and about 2,000 in the Russian Federation.

III. Natural resource investments on Sami lands

6. In recent years, high mineral and energy commodity prices have driven an increase in natural resource investments in the Nordic countries. While locally that has been welcomed as a source of employment and development opportunities, it has also sparked conflict, especially in areas where Sami communities find themselves competing for their land with other interests, including the construction of buildings and roads, mining, windmills, hydroelectric dams, overhead power lines, oil and gas installations, forestry projects and tourism activities.

7. During her visit, the Special Rapporteur observed that the natural resource extraction currently under way in the Sapmi region has created an unstable atmosphere of social conflict. That is acknowledged not only by the Sami communities that are affected, but also by public authorities and extractive companies themselves. The tension between the competing interests of the Sami people and business activities that are being pursued on their lands is likely to inform the dynamics of indigenous issues in the Nordic countries and should, as a matter of priority, be addressed by the Governments concerned.

8. As the former Special Rapporteur noted, and in keeping with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, the responsibility of the State to ensure the protection of the rights of indigenous people in the context of natural resource investments entails "ensuring a regulatory framework that recognizes indigenous peoples' rights over lands and natural resources". That means respect for those rights both in all relevant State administrative decision-making and provision for effective sanctions and remedies when those rights are infringed either by government or corporate entities. The regulatory framework "requires legislation or regulations that incorporate international standards of indigenous rights" and that make them operational through the various components of State administration that govern "land tenure, mining, oil, gas and other natural resource extraction or development" (see A/HRC/24/41, para. 44).

9. A point of contention in the Special Rapporteur's discussions with representatives of the Sami people and the Governments concerned has been the scope and content of the State duty to consult the Sami people and the need to obtain their consent for natural resource investment projects on their traditional territories. Through traditional use, the Sami people have established property rights to their lands and resources and to property in the form of rights to continue to pursue their traditional livelihoods. The States' obligation to respect property rights on the basis of customary land tenure is grounded both in multilateral human rights treaties that are binding upon the Governments concerned, including the International Covenant on Civil and Political Rights, and the International

Based on country of birth and nationality.

See Human Rights Committee, general comment No. 23 (1994), para. 7.

Convention on the Elimination of All Forms of Racial Discrimination,[7] and the United Nations Declaration on the Rights of Indigenous Peoples.[8]

10. States' expropriation of land traditionally used by the Sami people, be it for the purpose of natural resource extraction or other development projects, constitutes a limitation of their property rights. Relevant international standards, such as the the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), establish that the State has a duty not only to consult with the affected Sami community but to obtain its free, prior and informed consent. The duty to consult and the requirement for consent apply not only to measures that will affect an already recognized right or legal entitlement, but to any measures that may affect lands that are traditionally owned or possessed under customary tenure, whether officially titled or not, of the Sami people. Consultation and consent are not a single event, but should readily occur at all stages of a project, from exploration to production to project closure. In addition to consultation and consent, additional safeguards need to be in place in order to ensure that the rights of the Sami people are adequately protected in the face of natural resource investments. Such additional safeguards include prior impact assessments that focus adequate attention on the full range of rights that may be affected, mitigation measures to avoid or minimize the impact on those rights, fair and equitable benefit-sharing and compensation for impacts.

IV. Cross-border Sami initiatives

A. Nordic Sami convention

11. An important cross-border initiative of the Sami people has been the effort to develop a Nordic Sami convention in conjunction with the Governments of Norway, Sweden and Finland with the aim of safeguarding and developing the Sami people's languages, culture, livelihoods and way of life with the least possible interference from the imposition of borders by national authorities. In 2005, the expert group appointed to draft the convention unanimously agreed on a draft text, which was presented to the Sami parliaments and Nordic Governments the same year. The draft convention includes provisions relating to self-determination, non-discrimination, Sami governance, including the Sami parliaments and their relationship to the State, languages and culture, education, and rights to lands, water and livelihoods. The draft convention also contains several provisions related to its implementation, including the establishment of a complaints mechanism.

12. Following long and complicated negotiations between Governments and Sami Parliaments on the modalities for continued negotiations, an agreement on the setting for negotiations on the convention was reached in November 2010, and negotiations towards adoption of the convention began in 2011 with the aim of completion by March 2016.

13. A recurring subject of concern during the Special Rapporteur's visit was the delay from the Governments in finalizing the convention. While she appreciates that there are a number of difficult questions on which to reach agreement, she hopes that the States concerned will take advantage of the opportunity to put in place positive measures designed

[7] See Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples, para. 5; CCPR/C/SWE/CO/6, para. 20; CCPR/C/FIN/CO/6, para. 16; and CCPR/C/SWE/CO/7, para. 39.

[8] See the United Nations Declaration on the Rights of Indigenous Peoples, arts. 25-32.

to promote respect for their obligations to indigenous people based on their human rights obligations, including the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

14. The United Nations Declaration on the Rights of Indigenous Peoples should constitute an important impetus and guide for the Nordic Sami convention. The Declaration represents a global consensus among States, including Norway, Sweden and Finland, and indigenous peoples worldwide. As a product of decades of deliberations by indigenous peoples and States Members of the United Nations, the Declaration builds on the general human rights obligations of States and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity, which are incorporated into widely ratified human rights treaties to which all three States are parties.

15. The Special Rapporteur notes, in particular, the active role that all three Governments played in the negotiations on the Declaration and in ensuring its adoption by the General Assembly in 2007. In their endorsement of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, which was held in September 2014,[1] all three States also reaffirmed their support for the Declaration and committed to upholding its principles. The Special Rapporteur appreciates that all three Nordic Governments have devoted a high level of attention to advancing the rights of indigenous peoples in international human rights forums. While she does not wish to diminish the significance of such support, it is her view that all three Governments need to explore ways to ensure that there is policy coherence between the positions they take in international human rights forums and those they take at home. The Special Rapporteur sees that the standards of the final outcome should not be lower than those to which all three States have committed in endorsing the Declaration and the outcome document.

16. The Special Rapporteur regrets that the Russian Sami have not been included in the process of drafting the Nordic Sami convention, but remains hopeful that, as soon as it has entered into force, the Nordic countries will initiate discussions with the Russian Federation on how the provisions of the convention can also become a reality for the part of the Sami population that resides within the Russian Federation.

B. Sámi Giellagáldu

17. The Sami languages are central to Sami identity and essential to their survival as a people. With the number of speakers of the Sami languages decreasing rapidly, all nine Sami languages are now considered threatened or extremely threatened by the United Nations Educational, Scientific and Cultural Organization. While the Special Rapporteur appreciates that the Governments concerned have adopted different affirmative measures to revitalize Sami languages, more needs to be done. In particular, the Sami people's own initiatives, such as the cross-border project Sámi Giellagáldu, should be supported and long-term funding strategies developed to ensure their sustainability.

[1] See General Assembly resolution 69/2.

V. Country analysis

A. Norway

1. General legal and policy framework

18. In addition to being the first country to ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), Norway voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples. Norway has incorporated the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination into its domestic law.[7] The obligation of Norway to secure the rights of the Sami people also arises under the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, Norway has endorsed the Guiding Principles on Business and Human Rights and in November 2015, it adopted a national action plan to give practical effect to that endorsement,[8] although the plan appears to focus on Norwegian companies operating abroad rather than on business activities and their impact on human rights within Norway.

19. Following an amendment adopted in 1988, the Norwegian Constitution establishes an obligation on the authorities to protect the Sami, their culture and traditional livelihoods. The Sami Act of 1987 establishes the Sami Parliament, giving it the dual function of serving as an elected political body for the Sami and carrying out administrative duties in various areas affecting Sami people.

2. Self-determination

20. In 2005, the Sami Parliament and the Government entered into an agreement concerning consultation procedures in matters that might affect Sami interests directly,[9] agreeing that consultations should continue as long as the Sami Parliament and State authorities considered it possible to achieve agreement. While representatives of the Sami Parliament indicate that the agreement has strengthened cooperation, they also shared the concern that its implementation remains particularly challenging in relation to energy development projects and reindeer husbandry. In addition, representatives of the Sami Parliament expressed frustration that the consultation agreement does not cover financial initiatives or budgetary measures, and that a previous agreement between the Government and the Sami Parliament that procedures for financial instruments would be dealt with in a separate process has yet to materialize.

3. Rights to lands, water and natural resources

21. The Finnmark Act of 2005 provides a potential foundation for the protection of Sami land and resource rights in Finnmark County. Under the Act, ownership of land and resources in Finnmark was transferred from State to local ownership, and the Finnmark Estate was established as the new landowner. The Estate serves multiple functions, including as a resource management agency, caretaker of the interest of local inhabitants and commercial entity.

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[7] See the Human Rights Act (1999), sect. 2, and the Anti-Discrimination Act (2005), sect. 2.

[8] See www.regjeringen.no/en/aktuelt/business_hr/id2457726.

[9] See the procedures for consultations between State authorities and the Sami Parliament [Norway], signed 11 May 2005, sect. 2.

22. The Finnmark Act formally recognizes that Sami communities and individuals and others, through long use of land and water, have acquired rights to land and natural resources in Finnmark and sets in motion a process for identifying and recognizing existing rights of use and ownership.[7] The identification process is carried out by the Finnmark Commission, while the Land Tribunal for Finnmark has been established to settle any disputes arising after the Commission has concluded its investigations into specified areas. Notably, if no local ownership rights are found in specified areas, the Finnmark Estate remains the proprietor of those areas. As such, a common criticism of the current model has been that it does not afford the local people of Finnmark a real right to manage their resources on their traditional lands and territories.

23. In 2011, the former Special Rapporteur noted that the extent to which the Finnmark Act would genuinely advance Sami self-determination and resource rights would be determined by its implementation over time (see A/HRC/18/35/Add.2, para. 44). While the process for identifying rights in the entire County of Finnmark has yet to conclude, the Special Rapporteur notes that in the investigations concluded to date,[8] the Commission has almost exclusively found no grounds for recognizing Sami individual or collective ownership or usage rights beyond usage rights already granted to all inhabitants in Finnmark. Such conclusions seem to have been motivated by the State's active and extensive disposition of land and resources in the investigated fields which is seen to have precluded property or usage rights for the local population.

24. The Special Rapporteur is of the view that the State's earlier dispositions as the claimant of property rights in Finnmark cannot be considered to create law in order to support its continued ownership of land. The importance of that point can be further underscored by the fact that in many cases, the Sami communities' severed connection to their lands and resources is a result of earlier government policies and assimilation efforts towards the Sami. A starting point for any measures to identify and recognize indigenous peoples' land and resource rights should be their own customary use and tenure systems. That is also clear in the United Nations Declaration on the Rights of Indigenous Peoples, article 26 (3) of which indicates that States are obligated to provide legal recognition and protection to those lands, territories and resources that indigenous peoples have traditionally owned, occupied or otherwise used or acquired "with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned". Likewise, article 8 (1) of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides that due regard must be paid to customs and customary law of the indigenous peoples concerned in applying national laws and regulations.

25. The dual role of the Finnmark Estate as both a resource management agency and commercial entity has also been cause for concern. According to information received, the Estate is currently processing applications for land encroachments in Finnmark County that may have long-standing adverse impacts on the possibilities of Sami communities to pursue their traditional livelihoods. In the Special Rapporteur's view, the ability of the Estate to handle the dual role will be essential for its legitimacy and for the Finnmark Act to genuinely advance Sami land and resource rights.

26. Another outstanding concern is the lack of specialized mechanisms in place to identify Sami land and resource rights outside Finnmark outside the ordinary court system, despite the previous Special Rapporteur's recommendation in 2011 that Norway finalize the process of clarifying and securing Sami land and resource rights both within and outside

[7] See the Finnmark Act, sect. 5.

[8] Findings of the Finnmark Commission in Stjernøya/Seiland (2012), Nesseby (2013), Sørøya (2013), the Varanger Peninsula East (2014) and Varanger Peninsula West (2015).

Finnmark County (see A/HRC/18/35/Add.2, para. 81). The Committee on the Elimination of Racial Discrimination has recommended that Norway follow up on the proposals of the Sami Rights Committee, including by establishing an appropriate mechanism and legal framework, and identify and recognize Sami land and resource rights outside Finnmark (see CERD/C/NOR/CO/21-22, para. 30 (b)).

27. The Special Rapporteur heard explanations from Sami representatives that resource areas, the diversity of nature, cultural monuments, the landscape and the fjords comprise an important part of the basis for their culture. The management of areas, nature and cultural heritage is therefore important to ensure the basis for preserving and developing Sami culture. It is important to find good solutions for the management of the use and conservation of natural resources that secure the reindeer husbandry, fresh and seawater fishing, small-scale farming, hunting and gathering that are important to Sami culture. The Special Rapporteur noted disagreement between State authorities and the Sami people on the current regulations on sea salmon fishing and spring duck hunting in the municipality of Guovdageaidnu/Kautokeino.

28. A major concern of Sami representatives relates to the Minerals Act[1] and its limited recognition of the rights of the Sami people. Despite objections from the Sami Parliament, the Minerals Act was adopted in 2009, and was the subject of an exchange of correspondence between the former Special Rapporteur and the Government of Norway. In 2015, the Committee on the Elimination of Racial Discrimination raised concerns over the Act's limited safeguards for the Sami people and recommended that it be revised (see CERD/C/NOR/CO/21-22, para. 30).

29. A central concern is that the Minerals Act differentiates between the Sami in Finnmark and those outside Finnmark, who have no specific rights or safeguards. The distinction is particularly problematic as there are currently no legal frameworks or specialized mechanisms in place to identify Sami land and resource rights outside Finnmark County, and it may in practice jeopardize future recognition of Sami claims to their traditional lands and resources. Another concern expressed to the Special Rapporteur relates to the absence of a requirement to consult and obtain consent for proposed measures. While the Act provides the Sami Parliament with an opportunity to comment on applications for licences in Finnmark and attributes some weight to Sami culture when assessing the applications,[2] the Special Rapporteur does not consider that international standards are met when consultation consists of a mere opportunity to comment on proposed measures that may have a significant impact on the Sami people and their rights. Another way in which the Minerals Act does not meet international standards is the lack of specific consultation or consent requirements with respect to the particular Sami communities that will be directly affected by the proposed measures.

30. While the Special Rapporteur notes that the procedures for consultations between the Norwegian and Sami Parliaments apply to the whole central government administration and are said to embrace mineral activities, there appears to be a lack of common understanding between the Government and the Sami Parliament about how the consultation agreement is to be complied with in practice. Sami representatives have suggested that the implementation of the procedures for consultation remains particularly challenging in relation to energy development projects and reindeer husbandry. That, together with a regulatory regime that does not adequately protect Sami interests and rights, makes it difficult to ensure predictability and to allow for coexistence between traditional and new industries. In the view of the Special Rapporteur, the criticism frequently directed

[1] Act of 19 June 2009 No. 101 relating to the acquisition and extraction of mineral resources.

[2] See the Minerals Act, sect. 17.

at the consultation procedures is a strong impetus for their evaluation, with the participation of the Sami Parliament, to ensure their effectiveness.

31. Attention has also been drawn to the absence of provisions for benefit-sharing with Sami communities when mines are located on traditional Sami lands, and to the absence of any frameworks for dispute resolution between mining companies and affected Sami communities. Sami representatives have also shared their concerns that applications for exploration and exploitation concessions are considered in a piecemeal fashion, with little consideration given to the interaction of the proposed measure with already existing projects and the accumulated impact that they have on the affected Sami communities.

32. In the light of the international human rights obligations and commitments that Norway has assumed with respect to the Sami people, including the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Minerals Act raises doubts about the State's ability to respect, protect and fulfil human rights in the context of extractive activities. It also raises doubts as to whether the State is setting out clearly the expectation that all business enterprises respect human rights throughout their operations. From a business perspective, a deficient regulatory framework also creates barriers for businesses to carry out their operations in a manner consistent with international expectations regarding the rights of indigenous peoples. As much has also been made clear by the Norwegian mineral industry which, in an open letter addressed to the Government in December 2014, requested that the Minerals Act be revised and clarified with respect to the Sami people and their rights.

4. Language and education

33. In Norway, the Sami people's right to preserve and develop their languages is recognized in the Constitution and in several laws, including the Sami Act of 1987. Following the visit of the previous Special Rapporteur, the Government adopted an Action Plan for Sami Languages, which has reportedly been a useful tool in the work to strengthen and develop the Sami languages. The Special Rapporteur was pleased to learn that, based on an initiative from the Sami Parliament, a committee to evaluate legislation, measures and arrangements for the Sami languages was appointed in 2014 to clarify current initiatives in place and how they can be adapted within the public sector to ensure functional and equal public services in Sami. She hopes that the committee's report, which is due to be issued in September 2016, will contain recommendations to address the concerns about the need for a more comprehensive language policy that covers society as a whole and for government departments to be better informed about Sami conditions and languages in order to be able to put in place such a comprehensive language policy.

34. With respect to culturally appropriate education, the Sami Parliament has raised concern over the limited oversight and quality of Sami educational programmes. County governors' offices are responsible for overseeing training programmes in Norway, and the Sami Parliament has not been invited to play a part in oversight or evaluations.

B. Sweden

1. General legal and policy framework

35. In relation to its international human rights obligations to protect the rights of indigenous people, Sweden is party to the major United Nations human rights treaties. Sweden voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples in 2007, but has not ratified the ILO Indigenous and Tribal Peoples Convention,

1989 (No. 169), despite recommendations from international human rights mechanisms to do so.[9] Sweden has endorsed the Guiding Principles on Business and Human Rights and adopted a national action plan for business and human rights in August 2015, similar to its Norwegian counterpart, primarily focused on human rights in Swedish business operations abroad. A central weakness of the national action plan is its lack of consideration of indigenous peoples, including the Sami.

36. Following a recent amendment, as of 1 January 2011, the Swedish Constitution recognizes the Sami as a people rather than a minority group in Sweden. The Sami Parliament Act established the Swedish Sami Parliament with the principal function of "monitoring issues concerning the Sami culture in Sweden".[10]

2. Self-determination

37. As noted by the former Special Rapporteur, there is an ongoing need to increase the Sami parliaments' autonomy and self-governance authority and to strengthen their ability to participate in and genuinely influence decision-making in matters that affect the Sami people (see A/HRC/18/35/Add.2, para. 37). Of particular concern is the structure of the Swedish Sami Parliament, which functions as both a State administrative agency and as a popularly elected body. Representatives of the Swedish Sami Parliament have expressed concern that its role as State administrative agency obliges it to implement policies and decisions made by the Swedish Parliament and government institutions, which are sometimes at odds with the policy preferences of the Sami people (see A/HRC/18/35/Add.2, para. 42). Concerns have also been raised about its limited decision-making power.

3. Rights to lands, water and natural resources

38. The Reindeer Herding Act recognizes the Sami people's right to use land and water traditionally used for themselves and their reindeer.[11] Reindeer herding rights in Sweden are exclusive to the Sami people and may only be exercised by those who are members of designated communities, known as *samebyar*, and who practise reindeer herding as their principal livelihood. Specific reindeer grazing areas have not yet been officially demarcated in Sweden. Importantly, in 2002 the Government appointed a Boundary Delimitation Commission to identify lands traditionally used by the Sami people. The Commission delivered its report in 2006.[12] Although the former Special Rapporteur recommended that Sweden increase its efforts to demarcate the traditional territory of the Sami people (see A/HRC/18/35/Add.2, para. 82), the Government has not yet done so. The limited protection for the Sami people of their right to their lands and resources and the lack of concrete action, including the adoption of specific legislation, is cause for concern and continues to be subject to criticism by the United Nations human rights treaty bodies.

39. Compounding the difficulty faced by the Sami in asserting their rights is the fact that the legal aid system in Sweden does not provide financial support for Sami people to that end, a concern also previously raised by United Nations human rights treaty bodies (see CCPR/C/SWE/CO/6, para. 21, and CERD/C/SWE/CO/18, para. 20) and the former Special Rapporteur (see A/HRC/18/35/Add.2, para. 53). In practice, the exclusion of Sami

[9] See CERD/C/SWE/CO/19-21, para. 19; E/C.12/SWE/CO/5, para. 15; A/HRC/29/13, paras. 145.2–145.4, 146.6 and 146.7; A/HRC/18/35/Add.2, para. 73; and CCPR/C/SWE/CO/7, para. 39.

[10] *Sameting slag (1992:1433)*, sect. 1.

[11] *Rennäringslagen (1971:437)*.

[12] Report of the Boundary Delimitation Committee (SOU 2006:14).

[13] See, for example, E/C.12/SWE/CO/5, para. 15; CERD/C/SWE/CO/19-21, para. 17; and CCPR/C/SWE/CO/7, para. 39.

communities from financial support under the Legal Aid Act[39] has significantly limited their ability to effectively assert their rights, including in the face of natural resource investments on their traditional territories and in disputes concerning reindeer grazing rights.

40. The main legislation governing mining activities in Sweden is the Minerals Act.[40] Unlike its Finnish and Norwegian counterparts, the Minerals Act does not include any explicit references to Sami rights. While Sami reindeer herding rights are formally protected, that is not explicitly mentioned in the Minerals Act, but rather in related legislation.

41. In addition to the Minerals Act, the Environmental Code[41] applies in matters concerning the granting of a concession, while a permit for exploitation is granted under both the Minerals Act and the Environmental Code. Exploration permits and exploitation concessions are granted by the Mining Inspectorate and may be appealed before the Government. While companies must submit an environmental impact assessment in order for an exploitation concession to be granted, that process merely seeks to establish the conditions for mining and does not preclude mining activities if negative impacts on Sami culture and livelihoods are found.

42. There are no requirements for social impact assessments under Swedish law. Assessments for permits and concessions are conducted on a case-by-case basis and applications for exploration and exploitation permits are not evaluated against already existing projects and the cumulative impact that they may have on the affected Sami communities. That is seen as particularly problematic as many Sami communities are struggling to adjust to multiple extractive and development projects on their traditional territories, a point that has been raised not only by affected Sami communities but also by companies pursuing projects on Sami lands.[42]

43. Following amendments in 2014, the Minerals Ordinance[43] specifies that for activities proposed in reindeer herding areas, the Sami Parliament has the right to be informed and to express an opinion on applications for exploitation permits. However, the Special Rapporteur was informed that those amendments have substantially increased the workload of the Sami Parliament, but that has not been coupled with the increase in budget needed to adequately accomplish the task. At the earliest stages of the permit process, the landowner and other interested parties, which have been specified to include reindeer herding communities only, also have a right to be informed about the workplan and to express their opinion or opposition to the plan. In the view of the Special Rapporteur, that provision cannot readily be seen as meeting the State's duty to consult and obtain the consent of affected Sami communities as its scope is limited to a right to state an opinion on a proposed plan of operations, and does not entail a right to withhold consent to the granting of the permit.

44. Areas deemed to be of national interest for reindeer herding are protected through the Environmental Code, and the Sami Parliament is the responsible agency for identifying such areas.[44] A central concern, however, is the fact that those areas may overlap with other national interests, designated by other State agencies, including energy production, nature

[39] *Rättshjälpslag (1996:1619)*.
[40] *Minerallagen (1991:45)*.
[41] *Miljöbalk (1998:808)*.
[42] See the decision of the Norwegian National Contact Point for the OECD Guidelines for Multinational Enterprises in Jijnevaerie Sami Village and Statkraft SCA Vind AB (SSVAB) (2016) 6.4, p. 9.
[43] *Mineralförordning (1992:285)*.
[44] See *Miljöbalk*, chap. 3, sect. 5.

conservation, but also mineral exploitation. In that regard, the Environmental Code regulates how conflicts between different classifications of national interest, for example reindeer husbandry and the prospects of economic gain from mineral extraction, should be resolved. According to the Environmental Code, when such interests collide, the State should give precedence to the interest that best promotes long-term sustainable use of land and water and take ecological, social, culture and economic factors into account.[24]

45. The Special Rapporteur heard significant concerns about the balancing of interests that is called for in the Environmental Code. In practice, the weighing of interest is rarely done and when it does happen, relevant State bodies appear to routinely assess reindeer herding exclusively from an economic perspective and balance it against the State's interest in job creation and State revenue from mining activities. Sami representatives shared their concerns about the sequencing of the process, as the weighing of interests takes place at a late stage of the permit process, when the relevant extractive companies' and local politicians' expectations about a new mine are already high.

46. The Special Rapporteur notes that under international standards and comparative legal practice, the State's expropriation of lands traditionally used by Sami communities, whether the lands have been officially titled or not, constitutes a limitation of their property rights and can be justified only if such a limitation is pursuant to a valid public purpose. Such a valid public purpose cannot be found in mere commercial interests or revenue-raising objectives (see A/HRC/24/41, para. 55). In the view of the Special Rapporteur, a balancing of interests as foreseen by the Environmental Code, where traditional Sami livelihoods are weighed against possible economic gain only, is not in line with the international human rights obligations and commitments that the State has assumed with respect to indigenous peoples.

47. In addition, the Special Rapporteur notes the lack in the legal framework regulating mineral extraction in Sweden of any specific requirements for fair and equitable benefit-sharing with Sami communities.

4. Rönnbäck mine

48. During her visit, the Special Rapporteur visited the site of the planned mining complex in Rönnbäck, located in the heartland of the Vapsten Sami village's traditional territory. The project has generated heated public debate nationally and gained attention internationally. Community members expressed concern to the Special Rapporteur that the proposed mining activities would destroy key areas within their traditional territory that are indispensable for the continued pursuit of their traditional livelihood. They said that their tolerance was fast reaching breaking point as they are already competing for their land with several other interests, including industrial logging, roughly 800 windmills and 2 mines. In addition, 80 applications for exploration concessions on their traditional territory are currently being considered. Despite appeals, the decision to grant the concession for the Rönnbäck mine was upheld by the Government in August 2013 and further sanctioned by a decision of the Supreme Administrative Court in October 2014. In its decision, the Government acknowledged that Sami reindeer husbandry rights were constitutionally protected, but that restrictions on those rights were nonetheless permitted in cases where it was in the public interest. In the Rönnbäck mine case, the State considered that the public interest had been met in the form of substantial economic gain.[25] In 2013, the Vapsten Sami village lodged a complaint with the Committee on the Elimination of Racial Discrimination, which in October 2013 requested Sweden to suspend all mining activities

[24] Ibid., sect. 10.

[25] See the decision of the Government (*Regeringsbeslut*) of 22 August 2013.

in Vapsten's traditional territory while the case was before the Committee. Faced with lost productivity due to the temporary shutdown, the company pulled out of the venture in 2015. While the Special Rapporteur does not wish to prejudice the outcome of the proceedings of the Committee, she is of the view that the case of Vapsten poignantly illustrates the need for a domestic regulatory framework that adequately recognizes and protects Sami rights in accordance with international human rights standards.

5. Language and education

49. Under the National Minorities and Minority Languages Act,[7] Sami languages spoken in Sweden are granted protections within certain designated administrative areas, including with respect to dealings with State agencies. Those legal guarantees, however, remain only partially implemented, often as a result of a lack of staff with Sami language skills.

50. In Sweden, education in the Sami language is mainly guaranteed in the Swedish Sami schools created in the 1990s. Currently, a Sami school pupil is required to enrol in 800 hours of Sami teaching. Over a period of six years of schooling, that amounts to fewer than four hours a week. Currently, there are only five Sami schools and their coverage does not extend to the entire Sami region.

51. Swedish municipalities may enter into agreement with any of the five Sami schools to pursue so-called integrated Sami teaching, meaning that they commit to provide Sami language teaching similar to that offered by the Sami schools, that is, 800 hours over six years. At present, only 9 of the 19 municipalities in the Sami administrative area provide integrated Sami teaching. In Sweden, Sami teaching is sporadic at best, with no schools providing regular Sami teaching beyond the elementary school levels.

52. The Swedish Educational Decree adopted in 2011[8] appears to further reduce the possibility for full Sami language immersion. Under the Decree, a student who is a member of a national minority, including the Sami people, has the right to mother-tongue teaching in his or her language. However, in primarily aiming to integrate national minorities, the Decree specifies that only half of the total amount of teaching can be in the mother tongue of the student and it is planned so as to ensure that teaching progressively increases in Swedish. Together, those requirements form an obstacle to effective Sami language teaching and prevent more Sami children from learning Sami languages.

C. Finland

1. General legal and policy framework

53. Finland is party to all the major United Nations human rights instruments and voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples. Finland has not ratified the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), although a proposal for ratification is currently under consideration. Similar to Norway and Sweden, in October 2014 Finland endorsed the Guiding Principles on Business and Human Rights and developed a national action plan for their implementation. While the action plan stipulates that Finland is committed to continuing a dialogue relating to the human rights impacts of business activities with United Nations bodies for indigenous peoples, there is no specific consideration of the impact of business operations in Finland and their potential impacts on the Sami people.

[7] *Lag (2009:724) om nationella minoriteter och minoritetsspråk.*

[8] *Skollagsförordningen (2011:185).*

54. The status of the Sami as an indigenous people is recognized in the 1999 Constitution,[28] which indicates that the Sami have a right to cultural autonomy and linguistic and cultural self-governance within their native region,[29] covering the municipalities of Enontekiö, Inari and Utsjoki, as well as the area of the reindeer owners' association of Lapland in Sodankylä. The Sami Parliament Act establishes the Finnish Sami Parliament with the mandate to protect the Sami language and culture and matters relating to their status as an indigenous people. The Act also affirms that State authorities should negotiate with the Sami Parliament "all far-reaching and important measures that may directly or indirectly affect the Sami's status as an indigenous people", including matters relating to the management, use, leasing and assignment of State lands, conservation areas and wilderness areas.[30]

55. Finland is also home to a distinct Sami group, the Skolt Sami. A separate law, the Skolt Act,[31] includes provisions on their rights in the Skolt native area, a part of the Sami native area in the municipality of Inari. The Act recognizes the Skolt Sami Village Council as the representative body of the Skolt Sami and requires that it be consulted in matters that could affect the rights of the Skolt Sami.

2. Self-determination

56. Despite the strong statutory affirmations of the Sami Parliament Act and the Skolt Act, the Finnish Sami Parliament and the Skolt Sami Village Council have limited decision-making power, in particular with respect to land and resource rights. Representatives of the Finnish Sami Parliament reiterated the concern they had shared with the previous Special Rapporteur that most of their proposals and comments to the State went unanswered by the Government.

57. A highly vexed question is that of the electoral register of the Sami Parliament in Finland. The Sami Parliament Act establishes several criteria that a person has to meet to qualify as Sami for the purpose of voting.[32] According to reports received, the criteria were decided on without the consent of the Sami Parliament and they have recently become the subject of contentious interpretations by the Supreme Administrative Court. In the course of the two recent elections, the Sami Parliament rejected a group of applicants to the electoral register on the basis that they did not meet the objective criteria established by the Sami Parliament Act. The applications were reportedly part of one of many campaigns organized by non-Sami inhabitants of the northern parts of Finland who attempted to register as Sami voters in order to influence the composition of the Sami Parliament. While the Special Rapporteur is not in a position to judge the accuracy of such allegations, her attention has been drawn to the fact that several of those seeking to enrol on the electoral register are known to be outspokenly critical of the Sami and their rights as an indigenous people. She also notes that, unlike in Norway and Sweden, the Finnish Sami Parliament Act provides for a right of appeal to an external judicial institution, the Supreme Administrative Court,[33] which has no Sami representation, and there are no requirements for the Court to have specific knowledge of Sami culture.

58. The Special Rapporteur notes that in 2013, the previous Government presented a legislative proposal to amend the Sami Parliament Act that entailed extending the obligation for State authorities to cooperate in negotiations with the Sami Parliament on

[28] See the Constitution of Finland, sect. 17.
[29] Ibid., sect. 121, para. 4.
[30] Sami Parliament Act (No. 974/1995).
[31] Skolt Act (No. 253/1995).
[32] See the Sami Parliament Act, chap. 1, sect. 3.
[33] Decision of the Supreme Administrative Court 2015/148.

projects involving the Sami people with the objective of ensuring their agreement to proposed measures. In addition, the proposal sought to revise the criteria for approval for inclusion on the electoral roll of the Sami Parliament so as to better correspond to the Sami people's own criteria for group membership.[54]

59. That proposal could have had the potential to address the recommendation the former Special Rapporteur made in 2011 to continue and enhance efforts to implement the right of the Sami people to self-determination and to more genuinely influence decision-making in areas of concern to them (see A/HRC/18/35/Add.2, para. 76). The proposal established a duty for State agencies to cooperate with the Sami Parliament and consult it with the objective of obtaining its consent in matters that would have an impact on the Sami homeland region, and in matters that would affect Sami languages and culture or the position or rights of the Sami as an indigenous people. However, after provoking a highly politicized debate, the proposal was removed from Parliament without a vote during the last week of the session in March 2015.

60. Unlike in Norway and Sweden, reindeer husbandry is not a right reserved for the Sami people but is open to any citizen of the European Union. Reindeer herding is regulated through the Reindeer Husbandry Act,[55] and does not distinguish between Finnish reindeer herding practices and traditional Sami reindeer husbandry, which is a cause for ongoing concern for Sami reindeer herders who perceive the Act as eroding their opportunities to pursue reindeer husbandry in a manner that is culturally appropriate for the Sami. The Sami have been requesting the revision of the Act for many years.

3. Rights to lands, water and natural resources

61. In Finland, 90 per cent of the land within the area that is designated as Sami homeland is legally State land and is administered by the Finnish Forest and Park Enterprise. While there have been negotiations between the Government and the Sami Parliament to find common ground on the land rights issue, the legal status of the lands that the Sami people have traditionally used and occupied in Finland remains unresolved. The possibility for some outstanding land issues to be addressed during the recent reform of the Enterprise ended with the removal of the Sami rights from the proposed amendments to the Act regulating the Enterprise, as discussed below.

62. The adoption of a new Mining Act[56] in 2011 saw the introduction of a commitment to ensuring the rights of the Sami as an indigenous people in the context of extractive activities, and the inclusion of several provisions to that end. Importantly, the Mining Act establishes that in the Sami homeland region, all activities under the Act are to be adapted "so as to secure the rights of the Sami as an indigenous people".[57]

63. More specifically, the Mining Act provides that in the case of exploration, gold panning or mining permit applications in the Sami homeland, the Skolt area and in designated reindeer herding areas, the permitting authority is obliged to assess the potential impacts of those activities on the Sami people's rights to maintain and develop their own language and culture prior to approving any permits.[58] The requirement to assess impacts may also be relevant to applications for permits in areas outside the Sami homeland region if the proposed activities may be of significance to the rights of the Sami people. A permit will not be granted if it is deemed to undermine conditions for Sami or Skolt livelihoods

[54] Government bill No. 167/2014.
[55] Reindeer Husbandry Act (No. 848/1990).
[56] Mining Act (No. 621/2011).
[57] Ibid., part I, chap. 1, sect. 1.
[58] Ibid., part II, chap. 5, sect. 38.

and culture, or if it will cause considerable harm to reindeer herding.[9] In assessing the impacts, the permit authority is required to take into consideration not just the potential effect of the permit applied for, but also that of any other corresponding permits or other activities, such as forestry, in the area.

64. Under the Mining Act, the Sami Parliament and the Skolt Sami Village Council have an independent right of appeal concerning permits granted on the grounds that the proposed activities undermine the rights of the Sami as an indigenous people or, in the case of the Skolt area, if the activities may essentially weaken the living conditions of the Skolt Sami and their livelihoods.[10] If relevant, the Sami Parliament, the Skolt Sami Village Council or local reindeer owners' association are also expected to participate in the final inspections following the closures of mines.[11] The Mining Act does not contain any provisions on benefit-sharing with the Sami people.

65. Currently, there are no active mines in the Sami homeland region, but there is gold panning. While the Sami Parliament does not oppose traditional gold panning, it has expressed opposition to mechanized gold-panning projects, which are increasingly destroying Sami areas and threatening traditional Sami livelihoods.

66. The Mining Act is ambitious and shows that the Government is responding to concerns raised by the Sami people. However, concern has been shared with the Special Rapporteur about the unsatisfactory implementation of the Act. One of the more specific concerns is that the impact assessments that are required under the Act have not sufficiently addressed adverse impacts on the affected Sami communities, which has obliged the Sami Parliament to appeal all permits granted in the Sami homeland region. In the view of the Special Rapporteur, that implementation gap can to a large degree be attributed to the fact that the Mining Act does not clearly define conditions that undermine Sami or Skolt livelihoods and culture or cause considerable harm to reindeer herding, leaving too much room for interpretation. The problem has been further compounded by a limited understanding of Sami culture and livelihoods on the part of the State agency in charge of granting permits, and the fact that the evaluation of impact assessments has tended to rely disproportionately on information provided by the applicants. Permits appear to have been granted on the assumption that the applicants' activities will not have an adverse impact on Sami or Skolt livelihoods and culture or cause considerable harm to reindeer herding, whereas in practice, in many cases, the activities for which permits have been granted have entailed land encroachments that are detrimental to Sami cultural livelihoods.

67. While the Special Rapporteur is encouraged by the new Mining Act and its provisions to accommodate Sami rights, the concerns communicated to her make her question whether it has brought about concrete changes on the ground. She reminds the Government that the Guiding Principles on Business and Human Rights clearly establish that, in meeting their duty to protect, States should not only enforce laws that aim at, or have the effect of, requiring business enterprises to respect human rights, but should also periodically assess the adequacy of such laws and address any gaps.[12] She encourages the Government, in consultation with the Sami Parliament, to assess why the Act is not being enforced effectively and what measures could reasonably correct the situation. In that connection, one proposal that surfaced in her discussions with Sami representatives was to establish an independent oversight mechanism with expertise on Sami issues under the auspices of the permit authority in order to ensure that the quality impact assessments

[9] Ibid., part II, chap. 5, sect. 50.
[10] Ibid., part VI, chap. 17, sect. 165 (5).
[11] Ibid., part V, chap. 15, sect. 146.
[12] Guiding Principle 3.

sufficiently take into account impacts on the Sami community. Such a mechanism could serve to ensure more effective implementation of the Sami safeguards in the Mining Act, and would also reduce costs, not only for affected communities that are forced to appeal permits that are granted, but also for the companies involved, which would avoid temporary shutdowns and delays.

68. A recent development that also relates to natural resource investments in the Sami homeland area is the new legislation on the Finnish Forest and Park Enterprise[43] to regulate the management of land and water areas that the State claims as its own. With the reform of the Finnish Forest and Park Enterprise Act, passed in March 2016, part of the Sami people's traditional territory will be transferred to a State-run enterprise which, among other things, has the responsibility for industrial-scale logging carried out in the Sami homeland. That issue was subject to a communication between special procedure mandate holders and the Government of Finland (see A/HRC/32/53, p. 29).

69. The Special Rapporteur takes note of the Government's position that the Act establishes municipal advisory boards in the Sami homeland region with a mandate to reconcile different views on the use and management of State-owned lands,[44] and that the boards may, to some extent, strengthen the rights of the Sami people. However, in her view the Act does not make sufficiently clear whether the Sami people will have any genuine possibilities to influence decisions that may have an impact on their rights, nor does the Act provide any information on the tasks, membership, term of office and appointment of the boards.

70. From the perspective of the Guiding Principles on Business and Human Rights, the Act also appears problematic. The Special Rapporteur reminds the Government that its commitment to the Guiding Principles entails taking additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State.[45] For the issue at hand, such additional steps should, at a minimum, entail recognizing Sami rights over their lands, resources and traditional livelihoods and legal provisions to that effect. While the recognition in the Act that efforts will be coordinated in a manner that ensures that the Sami people are able to enjoy their culture is important, its implications are not fully spelled out in the operative sections of the Act, leaving the rights of the Sami people vulnerable to political discretion. In order to ensure that the human rights of the Sami people are not eroded by the implementation of the Finnish Forest and Park Enterprise Act, the Sami Parliament and the Skolt Sami Village Council, as well as affected Sami communities, need to have a stronger voice in the relevant processes. At a minimum, the membership of the municipal boards provided for in the Act should have equal representation of the Sami people and the boards should have a clearly defined mandate to assess any potential impacts of activities on the Sami people's rights to maintain and develop their own language and culture prior to approving any permits.

4. Language and education

71. Education in the Sami languages is guaranteed by law within the Sami homeland, where municipalities are entitled to receive increased subsidies for teaching in the Sami language.[46] There is still no legislation or policy that guarantees education in the Sami language outside the core Sami area, where the majority of Sami students live, a concern that was raised by the Committee on the Elimination of Racial Discrimination (see

[43] Finnish Forest and Park Enterprise Act (No. 234/2016) (*Laki Metsähallituksesta*).
[44] Finnish Forest and Park Enterprise Act, chap. 10, sect. 39.
[45] Guiding Principle 4.
[46] Financing of Education and Culture Act (No. 1705/2009).

CERD/C/FIN/CO/20-22, para. 14). A shortage of Sami teachers and education material, especially in the numerically smaller Skolt and Anar Sami languages, presents a further problem for education in the Sami languages and culture. Some measures have been taken to facilitate distance learning, but problems have arisen, primarily due to a lack of funding. Importantly, government funds to the Sami Parliament for preparing learning materials in the Sami languages have increased since the visit of the previous Special Rapporteur. In addition, in March 2012, a Government-appointed working group submitted its proposal for a programme to revitalize the three Sami languages spoken in Finland. A decision-in-principle on the revival programme for the Sami languages that was approved by the Government in July 2014 set the aim of working towards clear changes in the well-being of the Sami languages by 2025, and increasing the number of Sami speakers throughout the country.

72. While the Sami Parliament is consulted with regard to the national core curriculum, there is currently no specific Sami teaching curriculum for education in the Sami homeland. That has prompted an untenable situation where municipally approved Sami curricula are merely translated versions of the Finnish school curriculum, in which Sami culture and history is given only minimal and general coverage.

VI. Conclusions and recommendations

73. For the Sami people, rights over their lands and resources are the sine qua non conditions for their long-term well-being and a prerequisite for them to be able to continue to exist as a distinct people. Those rights do not appear to be sufficiently established, implemented or judicially protected in Norway, Sweden or Finland, resulting in their perpetual insecurity and instability. While the Special Rapporteur appreciates that natural resource investments are of key importance for the domestic economies of the three countries, it is her view that their ambition to promote mining in a socially and ecologically sustainable manner cannot be achieved as long as Sami rights are not adequately reflected and safeguarded in the legislation that regulates natural resource extraction.

74. In the light of the countries' international human rights obligations and the commitments they have assumed with respect to the Sami people, the Mining Act in Norway and the Minerals Act in Sweden raise serious doubts about the States' ability to respect, protect and fulfil human rights in the context of extractive activities. They also raise doubts as to whether the States are clearly setting out the expectation that all business enterprises respect human rights throughout their operations. From a business perspective, the deficient regulatory frameworks have also created barriers for companies to carry out their operations in a manner consistent with international expectations regarding the rights of indigenous peoples.

75. In Finland, the Mining Act shows that the Government is responding to concerns raised by the Sami people. However, in practice the Act appears to have fallen short of its stated objective to ensure that mining activities and gold panning are adapted "so as to secure the rights of the Sami as an indigenous people". The Special Rapporteur also notes that the 2016 Finnish Forest and Park Enterprise Act will have a significant impact on the Sami people, and that removing safeguards for the Sami people is not in line with international human rights obligations with respect to the Sami people.

A. Norway

76. The Special Rapporteur recommends that Norway enhance efforts to implement the right of the Sami people to self-determination and to more genuinely influence decision-making in areas of concern to them. That may to some extent be achieved through a more effective consultation arrangement, which should be extended to clearly cover budgetary decisions.

77. The Special Rapporteur recommends that Norway, together with the Sami Parliament and Sami communities, assess the adequacy of the Finnmark Act in advancing the Sami people's self-determination and land and resource rights. She calls on Norway to finalize the process of clarifying and securing Sami land and resource rights outside Finnmark County, and to ensure that due respect is paid to the customs, traditions and land tenure systems of the Sami people in implementing the Finnmark Act and in designing and implementing measures for recognition of land and resources outside Finnmark County.

78. Noting that sea salmon fishing and spring duck hunting in the municipality of Guovdageaidnu/Kautokeino form an important part of Sami cultural heritage and should be protected by special measures to ensure they can be pursued and maintained according to Sami tradition in a culturally and ecologically sustainable way, the Special Rapporteur urges the Government of Norway and the Sami Parliament to find solutions on regulations related to sea salmon fishing and spring duck hunting.

79. The Special Rapporteur calls on Norway to revise the Minerals Act to ensure that it conforms to relevant international standards, including those requiring adequate consultations with the affected indigenous communities and their free, prior and informed consent, mitigation measures, compensation and fair and equitable benefit-sharing. In addition, applications for exploration and exploitation permits should be evaluated against already existing projects and the cumulative impact that they have on the affected Sami communities.

80. The Special Rapporteur commends Norway for the adoption of the Action Plan for Sami Languages, which contains a number of good initiatives. In order to ensure that the plan is effective, relevant ministries should follow up and assess whether and to what extent all the measures have been completed and publicize the information in a final report that includes a follow-up plan for measures yet to be completed. In addition, the Government should enter into dialogue with the Sami Parliament on measures needed to ensure that government departments are better informed about Sami conditions and Sami languages and the development of a more comprehensive language policy. With respect to education, the Sami Parliament should be ensured a role in the oversight and evaluation of Sami educational programmes and their quality.

B. Sweden

81. The Special Rapporteur encourages Sweden to introduce reforms to ensure that the Sami Parliament has greater independence from State institutions and authorities. To that end, she urges Sweden to review the Sami Parliament's statutory status and functions in relation to government authority structures to ensure its independent decision-making powers and to ensure that adequate funding is allocated for the Sami Parliament to carry out its work as a popularly elected body.

82. The Special Rapporteur recommends the expeditious resolution of Sami land and resource rights issues by introducing appropriate legislation. She also reiterates the recommendation of the previous Special Rapporteur that Sweden adopt legislation to revise the high burden of proof required to establish traditional Sami rights to land in court proceedings and to provide Sami parties with legal aid in such proceedings.

83. As a matter of priority, Sweden should revise its Minerals Act to ensure that it is in compliance with international human rights standards, including adequate consultations with affected indigenous communities and their free, prior and informed consent at all stages of the permit process, mitigation measures, compensation and fair and equitable benefit-sharing.

84. Sweden should redouble its efforts to revitalize Sami languages and strengthen programmes for education in Sami languages, including by providing adequate funding to the Sami Parliament to assist in the implementation of concerted efforts to those ends, and by revising the Swedish Educational Decree to ensure that it does not hamper full Sami language immersion. In addition and at a minimum, all municipalities in the Sami administrative area should provide integrated Sami teaching.

C. Finland

85. The Special Rapporteur encourages the Government to reopen negotiations with the Sami Parliament on amendments to the Sami Parliament Act and to jointly develop a final and mutually acceptable proposal that addresses the full range of issues, including those relating to identification of a person as Sami for the purpose of registering on the electoral register.

86. Finland should, as a matter of priority, revise the Reindeer Husbandry Act and introduce special protection for Sami reindeer husbandry given the centrality of that means of livelihood to the culture of the Sami people.

87. In consultation with the Sami Parliament, Finland should continue to assess why the Mining Act is not being enforced effectively and what additional measures may be taken to reasonably correct that situation.

88. In order to ensure that the human rights of the Sami people are not eroded by the implementation of the Finnish Forest and Park Enterprise Act, the Sami Parliament and the Skolt Sami Village Council, as well as affected Sami communities, should be ensured a strengthened voice in related processes. At a minimum, the membership of the municipal boards provided for in the Act should have full and effective representation of the Sami people and a clearly defined mandate to assess any potential impacts of activities on the Sami people's rights to maintain and develop their own language and culture prior to approving any permits, to refrain from granting such permits if the activities risk undermining conditions for Sami or Skolt livelihoods and culture, or if they will cause considerable harm to reindeer herding.

89. As a matter of priority, Finland should ensure that the revival programme for the Sami languages receives adequate and long-term funding and that its implementation is evaluated annually, and is reported on to United Nations human rights mechanisms in the context of treaty body reviews. Finland should address the shortage of Sami teachers and education material, especially in the numerically smaller Skolt and Ánar Sami languages, and ensure that distance learning receives additional funding. In close consultation with the Sami Parliament, Finland should develop a Sami teaching curriculum for education in the Sami homeland and work with the Sami Parliament in preparing and approving the national school curriculum to ensure that it includes sufficient and accurate guidance on Sami history and culture.